

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN ASSEMBLY JULY 14, 2003

AMENDED IN SENATE JUNE 2, 2003

AMENDED IN SENATE MAY 1, 2003

AMENDED IN SENATE APRIL 7, 2003

---

**SENATE BILL****No. 1004**

---

**Introduced by Senators Soto and Romero  
(Coauthor: Senator Machado)**

(Coauthors: Assembly Members Calderon and Firebaugh)

February 21, 2003

---

An act to amend Section 13271 of, and to add Chapter 8.5 (commencing with Section 13610) to Division 7 of, the Water Code, relating to perchlorate.

LEGISLATIVE COUNSEL'S DIGEST

SB 1004, as amended, Soto. Perchlorate.

Existing law, the Porter-Cologne Water Quality Control Act, with certain exceptions, requires a person who causes or permits any hazardous substance or sewage to be discharged in any waters of the state, or where it may be so discharged or deposited, to immediately notify the Office of Emergency Services. The act makes any person who fails to provide the notice guilty of a misdemeanor that is punishable by a fine of not more than \$20,000 or imprisonment for not more than one year, or both.

This bill would, for the purposes of this provision, require the reportable quantity for perchlorate to be 10 pounds or more by direct



*discharge to the receiving waters, unless a more restrictive reporting standard is adopted for a particular body of water. By changing the definition of a crime, this bill would impose a state-mandated local program.*

*Existing law, with certain exceptions, requires a person who causes or permits any oil or petroleum product to be discharged in any waters of the state, or where it may be so discharged, to immediately notify the Office of Emergency Services. The act makes any person who fails to provide the notice guilty of a misdemeanor that is punishable by a fine of at least \$500, and not more than \$5,000, for each day of failure to notify.*

The act requires each California regional water quality control board, every 3 months, to publish and distribute to all public water system operators within the region a list of discharges of MTBE that occurred during the prior 3-month period and a list of locations where MTBE was detected in the groundwater within the region.

This bill, with certain exceptions, would require a person who causes or permits perchlorate to be discharged in any waters of the state, or where it may be so discharged or deposited, to immediately notify the *appropriate California regional water quality control board, and would require the regional board to notify the State Water Resources Control Board. The bill would require the state board, in consultation with the Department of Toxic Substances Control, to establish the amount of perchlorate that is required to be reported upon discharge.* The bill would make a person who fails to provide that notice *civilly liable for civil penalties of. The bill would provide that civil liability may be administratively imposed by a regional board in an amount not to exceed \$1,000 for each day of failure to notify or imposed by the superior court in an amount not less than \$500, or more than \$5,000, for each day of failure to notify. The bill would authorize a county district attorney, city attorney, public water agency, or the Attorney General to enforce this provision.*

The bill, on or before January 1, 2005, *and annually thereafter,* would require an owner or operator of a storage facility that has stored in any calendar year since January 1, 1950, over 500 pounds of perchlorate to submit to the state board, *to the extent feasible,* certain information relating to that storage. The bill would require the state board to publish, compile, keep centrally, and make available for public review certain information relating to the storage of perchlorate and the discharge of perchlorate. The bill would authorize the state board to charge a *an*



*annual fee to each owner of a storage facilities facility that provides certain information to the board. The fees would be required to be deposited in the State Water Quality Control Fund, to be available to the state board upon appropriation by the Legislature. The bill would require the state board to submit all this perchlorate storage information to the Secretary for Environmental Protection upon notification from the Secretary for Environmental Protection that it has established a database that is able to receive perchlorate inventory information and would provide that the provisions in this paragraph not be administered or implemented when the notification from the Secretary for Environmental Protection is received by the state board.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 13271 of the Water Code is amended to*  
2 *read:*

3 13271. (a) (1) Except as provided by subdivision (b), any  
4 person who, without regard to intent or negligence, causes or  
5 permits any hazardous substance or sewage to be discharged in or  
6 on any waters of the state, or discharged or deposited where it is,  
7 or probably will be, discharged in or on any waters of the state,  
8 shall, as soon as (1) that person has knowledge of the discharge,  
9 (2) notification is possible, and (3) notification can be provided  
10 without substantially impeding cleanup or other emergency  
11 measures, immediately notify the Office of Emergency Services  
12 of the discharge in accordance with the spill reporting provision of  
13 the state toxic disaster contingency plan adopted pursuant to  
14 Article 3.7 (commencing with Section 8574.16) of Chapter 7 of  
15 Division 1 of Title 2 of the Government Code.

16 (2) The Office of Emergency Services shall immediately notify  
17 the appropriate regional board and the local health officer and



1 administrator of environmental health of the discharge. The  
2 regional board shall notify the state board as appropriate.

3 (3) Upon receiving notification of a discharge pursuant to  
4 paragraph (2), the local health officer and administrator of  
5 environmental health shall immediately determine whether  
6 notification of the public is required to safeguard public health and  
7 safety. If so, the local health officer and administrator of  
8 environmental health shall immediately notify the public of the  
9 discharge by posting notices or other appropriate means. The  
10 notification shall describe measures to be taken by the public to  
11 protect the public health.

12 (b) The notification required by this section shall not apply to  
13 a discharge in compliance with waste discharge requirements or  
14 other provisions of this division.

15 (c) Any person who fails to provide the notice required by this  
16 section is guilty of a misdemeanor and shall be punished by a fine  
17 of not more than twenty thousand dollars (\$20,000) or  
18 imprisonment for not more than one year, or both. Except where  
19 a discharge to the waters of this state would have occurred but for  
20 cleanup or emergency response by a public agency, this  
21 subdivision shall not apply to any discharge to land which does not  
22 result in a discharge to the waters of this state.

23 (d) Notification received pursuant to this section or  
24 information obtained by use of that notification shall not be used  
25 against any person providing the notification in any criminal case,  
26 except in a prosecution for perjury or giving a false statement.

27 (e) For substances listed as hazardous wastes or hazardous  
28 material pursuant to Section 25140 of the Health and Safety Code,  
29 the state board, in consultation with the Department of Toxic  
30 Substances Control, shall by regulation establish reportable  
31 quantities for purposes of this section. The regulations shall be  
32 based on what quantities should be reported because they may pose  
33 a risk to public health or the environment if discharged to ground  
34 or surface water. Regulations need not set reportable quantities on  
35 all listed substances at the same time. Regulations establishing  
36 reportable quantities shall not supersede waste discharge  
37 requirements or water quality objectives adopted pursuant to this  
38 division, and shall not supersede or affect in any way the list,  
39 criteria, and guidelines for the identification of hazardous wastes  
40 and extremely hazardous wastes adopted by the Department of



Toxic Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The regulations of the Environmental Protection Agency for reportable quantities of hazardous substances for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) shall be in effect for purposes of the enforcement of this section until the time that the regulations required by this subdivision are adopted.

(f) (1) The state board shall adopt regulations establishing reportable quantities of sewage for purposes of this section. The regulations shall be based on the quantities that should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division. For purposes of this section, “sewage” means the effluent of a municipal wastewater treatment plant or a private utility wastewater treatment plant, as those terms are defined in Section 13625, except that sewage does not include recycled water, as defined in subdivisions (c) and (d) of Section 13529.2.

(2) A collection system owner or operator, as defined in paragraph (1) of subdivision (a) of Section 13193, in addition to the reporting requirements set forth in this section, shall submit a report pursuant to subdivision (c) of Section 13193.

(g) Except as otherwise provided in this section and Section 8589.7 of the Government Code, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency. When notifying the Office of Emergency Services, the person shall include all of the notification information required in the permit.

(h) *For the purposes of this section, the reportable quantity for perchlorate shall be 10 pounds or more by direct discharge to the receiving waters, unless a more restrictive reporting standard for a particular body of water is adopted pursuant to subdivision (e).*

SEC. 2. Chapter 8.5 (commencing with Section 13610) is added to Division 7 of the Water Code, to read:



## CHAPTER 8.5. PERCHLORATE

13610. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this chapter:

(a) “Perchlorate” means all perchlorate-containing compounds, including ammonium, potassium, magnesium, and sodium perchlorate.

(b) Subject to Section 13610.5, “perchlorate storage facility” means a facility that stores over 500 pounds of perchlorate in any calendar year.

13610.5. This chapter does not apply to ~~a~~ *the following*:

(a) A facility that stores perchlorate for retail purposes or for law enforcement purposes.

(b) *Drinking water storage reservoirs.*

13611. (a) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits perchlorate to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the state board. ~~The state board, in consultation with the Department of Toxic Substances Control, shall establish the amount of perchlorate, the discharge or deposit of which must be reported pursuant to this section.~~ *appropriate regional board. The regional board shall then notify the state board.*

(b) ~~The notification required by this section does~~ *notifications required by this section do* not apply to a discharge in compliance with this division, ~~or to water agencies conveying water in compliance with all state maximum contaminant levels.~~

(c) Any person who fails to provide the notice required by subdivision (a) and Section 13611.5 ~~is liable for civil penalties of not less than five hundred dollars (\$500), or more than five thousand dollars (\$5,000), for each day of failure to notify.~~

(d) ~~A county district attorney, city attorney, public water agency, or the Attorney General may enforce this section.~~

(e) ~~The court shall award to the Attorney General, a city attorney, district attorney, or public water agency that prevails in an action under this section all costs of investigating and~~



1 prosecuting that action, including expert fees, and reasonable fees  
2 and costs.

3 ~~(f)~~ may be civilly liable in accordance with subdivision (d).

4 (d) (1) Civil liability may be administratively imposed by a  
5 regional board in accordance with Article 2.5 (commencing with  
6 Section 13323) of Chapter 5 for a violation of subdivision (c) in an  
7 amount which shall not exceed one thousand dollars (\$1,000) for  
8 each day in which the violation occurs.

9 (2) Civil liability may be imposed by the superior court in  
10 accordance with Article 5 (commencing with Section 13350) and  
11 Article 6 (commencing with Section 13360) of Chapter 5 for a  
12 violation of subdivision (c) in an amount which shall not be less  
13 than five hundred dollars (\$500), or more than five thousand  
14 dollars (\$5,000), for each day in which the violation occurs.

15 (e) Notwithstanding Section 13441, all money collected by the  
16 state pursuant to this section shall be available to the state board  
17 or the Attorney General upon appropriation by the Legislature.

18 13611.5. On or before January 1, 2005, and annually  
19 thereafter, unless the owner or operator has met the alternative  
20 compliance requirements of subdivision (e), an owner or operator  
21 of a storage facility that has stored in any calendar year since  
22 January 1, 1950, over 500 pounds of perchlorate shall submit to the  
23 state board, to the extent feasible, all of the following information:

24 (a) The volume of perchlorate stored each year.

25 (b) The method of storage.

26 (c) The location of storage.

27 (d) Copies of documents relating to any monitoring undertaken  
28 for potential leaks into the water bodies of the state.

29 (e) The owner or operator of a storage facility that has stored  
30 in any calendar year since January 1, 1950, over 500 pounds of  
31 perchlorate, is in compliance with this section if both of the  
32 following conditions are met:

33 (1) The owner or operator has provided substantially similar  
34 information as required pursuant to subdivisions (a), (b), (c), and  
35 (d) to a state, local, or federal agency pursuant to an order issued  
36 by a regional water quality control board pursuant to Chapter 5  
37 (commencing with Section 13300) of Division 7, an order, consent  
38 order, or consent decree issued or entered into by the Department  
39 of Toxic Substances Control pursuant to Chapter 6.8 (commencing  
40 with Section 25300) of Division 20 of the Health and Safety Code,



1 or an order, consent order, or consent decree issued or entered into  
2 by the United States Environmental Protection Agency pursuant  
3 to the Comprehensive Environmental Response, Compensation,  
4 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et  
5 seq.) or the Resource Conservation and Recovery Act of 1976, as  
6 amended (42 U.S.C. Sec. 6901 et seq.) *or the requirement under*  
7 *Section 25504.1 of the Health and Safety Code, if that section is*  
8 *enacted by Assembly Bill 826 of the 2003–04 Regular Session to*  
9 *submit perchlorate information. In the case of any information*  
10 *submitted to a federal or local agency, the state board may require*  
11 *the owner or operator to, in addition, submit that information to*  
12 *the state board if the state board determines that the information*  
13 *is not otherwise reasonably available to the state board.*

14 (2) The owner or operator, on or before January 1, 2005, and  
15 annually thereafter, notifies the state board of the governmental  
16 entity to which the information is provided and the state board  
17 determines the information supplied is substantially similar as the  
18 information required to be reported pursuant to subdivisions (a),  
19 (b), (c), and (d).

20 (f) *This section shall not be administered or implemented if the*  
21 *state board receives notification from the Secretary for*  
22 *Environmental Protection pursuant to Section 13613 that the*  
23 *Secretary for Environmental Protection has established a*  
24 *database that is able to receive perchlorate inventory information.*

25 13612. (a) The state board shall publish and make available  
26 to the public on or before January 1, 2006, a list of past and present  
27 perchlorate storage facilities within the state. The state board may  
28 charge ~~a~~ *an annual* fee to each owner of a storage facility that  
29 provides information to the board for that purpose, which fee shall  
30 not exceed ~~fifty dollars (\$50)~~ *one hundred dollars (\$100) for each*  
31 *year information is provided.* The fees shall be deposited in the  
32 State Water Quality Control Fund and notwithstanding any other  
33 provision of law shall be available to the state board upon  
34 appropriation by the Legislature.

35 (b) The state board shall compile and keep centrally all  
36 information obtained pursuant to Sections 13611 and 13611.5. The  
37 information shall be available for public review.

38 13613. *Upon notification from the Secretary for*  
39 *Environmental Protection that it has established a database that*  
40 *is able to receive perchlorate inventory information pursuant to*



1 *paragraph (2) of subdivision (e) of Section 25404 of the Health*  
2 *and Safety Code, the state board shall submit to the Secretary for*  
3 *Environmental Protection all perchlorate storage information*  
4 *obtained pursuant to Section 13611.5.*

5 *SEC. 3. No reimbursement is required by this act pursuant to*  
6 *Section 6 of Article XIII B of the California Constitution because*  
7 *the only costs that may be incurred by a local agency or school*  
8 *district will be incurred because this act creates a new crime or*  
9 *infraction, eliminates a crime or infraction, or changes the penalty*  
10 *for a crime or infraction, within the meaning of Section 17556 of*  
11 *the Government Code, or changes the definition of a crime within*  
12 *the meaning of Section 6 of Article XIII B of the California*  
13 *Constitution.*

